**HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY**

**WRIT PETITION No.23528 of 2007**

**Dated: 06-11-2007**

Between:
Dulichand Goenka and three others.

...
Petitioners

AND
The Greater Hyderabad Municipal Corporation,
reptd., by its Commissioner, Tankbund road,
Hyderabad and another.

...
Respondents

Counsel for the petitioner: Sri B.Vijaysen Reddy.

Counsel for the respondents: Sri R.Ramachandra Reddy.

**HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY**

**WRIT PETITION No.23528 of 2007**

**ORDER:**

This Writ Petition is filed for a Writ of Mandamus to declare the action of the respondents in not entertaining the building permission application of the petitioners, in view of the objection raised by the Joint Collector, Hyderabad under endorsement dated 28-6-2007, as illegal, arbitrary and unconstitutional, and, consequently to direct the respondents to consider their building permission application without reference to the said endorsement dated 28-6-2007.

At the hearing, Sri B.Vijaysen Reddy, learned counsel for the petitioners, stated that when the petitioners approached the Commissioner of Greater Hyderabad Municipal Corporation (for short "the Corporation"), he refused to receive the application for sanction of building permission on the ground that the Joint Collector, Hyderabad, in his impugned endorsement dated 28-6-2007 granted "No Objection Certificate" only to the extent of 470.4 Sq.yards in premises bearing No.6-2-930 and 930/1, Chintal Basti, Khairtabad, Hyderabad in T.S.Nos.53/1 & 53/3, Block-M, Ward-84 of Khairtabad village and Mandal, Hyderabad, and that he declined to issue such a certificate in respect of 229.6 Sq. yards falling in T.S.No.53/2 of Khairtabad village. The learned counsel further submitted that in view of the judgment of this Court in **HYDERABAD POTTERIES PRIVATE LIMITED V. COLLECTOR, HYDERABAD**[(1)], the Commissioner of the 1st respondent Corporation cannot refuse to receive the application of the petitioners for sanction of building permission on the ground that the Joint Collector declined to grant "No Objection Certificate".

Sri R.Ramachandra Reddy, learned Standing Counsel for the Corporation, on the other hand, submitted that since the petitioners, on their own, approached the Joint Collector and invited the endorsement with a specific finding that an extent of 229.6 Sq. yards in T.S.No.53/2 is a Government land, there is no obligation on the part of the Commissioner to receive the application and grant building permission.

I have carefully considered the respective submissions of the learned counsel. Undoubtedly, under the provisions of the Hyderabad Municipal Corporation Act, 1955, the Corporation cannot insist on obtaining "No Objection Certificate" from the

revenue authorities and this position is made clear in **HYDERABAD POTTERIES** case (1 supra). Therefore, to the extent that the Commissioner refused to receive the application merely on the ground that the Joint Collector declined to grant "No Objection Certificate" in respect of a part of the land, cannot be sustained. But, at the same time, it cannot be said that the Commissioner is denuded of the power to consider the prima facie title and lawful possession of the party before granting building permission. This position is made clear in **HYDERABAD POTTERIES** case (1 supra) at para 40, which reads as under:

> "40. Of course, the Commissioner has to consider the objections, if any, raised for grant of permission. But, an objection raised by a member of the Committee itself would not be enough to reject the application for grant of permission. The Commissioner is required to make pragmatic assessment of the material available on record and decide the question of prima facie title and lawful possession of the applicants. The applications for grant of permission cannot be rejected solely on the basis of TSLR entries. After all, the decision to grant permission itself would not confer any title upon the applicant, nor it would take away the rights of the objector (s), whether the Government or any individual, for asserting their right, title and interest in the land in respect of which permission has been granted and dispute the title in any manner known to law. Similarly, the Commissioner is not entitled to decide any disputed questions of title or the ownership. All that the Commissioner required to do is to find out prima facie title and lawful possession of the applicant and obviously such consideration is confined to only for the purposes of granting permission and nothing more".

I, therefore, dispose of the Writ Petition with a direction that the Commissioner of the Corporation (1st respondent herein) shall receive the application to be filed by the petitioners for building permission, without reference to the endorsement dated 28-6-2007, and consider the same within a period of four weeks from the date of receipt of that application. However, it

shall be open to the Commissioner to be satisfied about the prima facie title and lawful possession of the petitioners over the property for which they are seeking sanction of building permission.

With the above observations, the Writ Petition is disposed of.

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Dt.06-11-2007 **C.V.NAGARJUNA REDDY,J**

Note:
Issue CC in two days.
(BO)

MNR

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(1) 2001 (3) ALD 600